



Appendix C

Interagency and
Intergovernmental
Interactions

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APPENDIX C. INTERAGENCY AND INTERGOVERNMENTAL INTERACTIONS

In the course of producing this environmental impact statement (EIS), the U.S. Department of Energy (DOE) has interacted with a number of governmental agencies and other organizations. These interaction efforts have several purposes, as follows:

- Discuss issues of concern with organizations having an interest in or authority over land that the Proposed Action (to construct, operate and monitor, and eventually close a geologic repository at Yucca Mountain) would affect directly, or organizations having other interests that some aspect of the Proposed Action could affect.
- Obtain information pertinent to the environmental impact analysis of the Proposed Action.
- Initiate consultations or permit processes, including providing data to agencies with oversight, review, or approval authority over some aspect of the Proposed Action.
- Provide information relevant to the development of responses to public comments on the Draft EIS and the Supplement to the Draft EIS.

Section C.1 summarizes the interactions. DOE has completed several efforts and will complete all required consultations before publishing the Final EIS. Section C.2 describes interests held by agencies and organizations involved in consultations and other interactions.

C.1 Summary of Activity

Table C-1 lists organizations with which DOE has initiated interaction processes concerning the proposed Yucca Mountain Repository. This table summarizes the authority of or interest of the listed organizations and the status of those interactions.

C.2 Interests of Selected Agencies and Organizations with which DOE Has Held Consultations or Informational Exchanges Regarding the Yucca Mountain Repository Proposal

Regulations that establish a framework for interactions include 40 CFR 1502.25, which provides for consultations with agencies having authority to issue applicable licenses, permits, or approvals, or to protect significant resources, and 10 CFR 1021.341(b), which provides for interagency consultations as necessary or appropriate.

C.2.1 FEDERAL AGENCIES

C.2.1.1 Bureau of Land Management

The Bureau of Land Management has a range of interests potentially affected by the Proposed Action. The Bureau, as a part of the U.S. Department of the Interior:

- Controls a portion of the land that would need to be withdrawn by Congress to accommodate the proposed repository

Table C-1. Organizations with which DOE has initiated interactions (page 1 of 5).

| FEDERAL AGENCIES | | |
|--------------------------------------|---|--|
| Organization | Authority/interest | Interactions |
| Bureau of Land Management | Controls part of land required for repository. Controls portions of lands in Nevada that transportation corridors cross. Has responsibility for management and use of lands it controls, including management of habitat and species. Has data on topography, habitat, species, and other topics on land it controls. | DOE provided a briefing on the EIS. DOE and BLM held a subsequent meeting to ensure understanding of comments on the Draft EIS and the Supplement to the Draft EIS. |
| Council on Environmental Quality | Oversees the National Environmental Policy Act process | DOE provided information and NEPA process products, including the Draft EIS and the Supplement to the Draft EIS, to assist CEQ in its oversight responsibility. DOE provided a briefing on the Draft EIS and the Supplement to the Draft EIS, including background information, schedule, and an update on the repository design. |
| National Marine Fisheries Service | Oversees compliance with Marine Protection Research and Sanctuaries Act and, for some species, with the Endangered Species Act. | DOE informally consulted with the National Marine Fisheries Service on possible effects of barging on threatened and endangered marine species. Endangered Species Act compliance information was requested. Project activities and National Marine Fisheries Service jurisdiction were discussed. DOE has completed activities required for marine species under the Endangered Species Act. |
| National Park Service | Potential for proposal to affect water supply in Death Valley region. Effect of any water appropriation required for repository, EIS status, and approach to EIS development. | DOE and NPS discussed NPS concerns about use of water for repository construction and operation. |
| Naval Nuclear Propulsion Program | The Naval Nuclear Propulsion Program is a joint U.S. Navy and DOE organization responsible for management of naval spent nuclear fuel. | DOE has conducted ongoing dialogue and information exchange on the EIS status and the DOE framework. |
| Nuclear Waste Technical Review Board | Provides technical and scientific expertise in the evaluation of program activities related to site characterization and the packaging, transportation, and disposal of spent nuclear fuel and high-level radioactive waste. | DOE has provided information and work products to the Board, has met with the Board to review aspects of site characterization and the suitability determination, and has received scientific and technical recommendations from the Board. DOE provided a briefing on the Draft EIS and the Supplement to the Draft EIS, including background information, schedule, and an update on the repository design. DOE also provided opportunities for public involvement in some of its interactions with the Board. |

Table C-1. Organizations with which DOE has initiated interactions (page 2 of 5).

| FEDERAL AGENCIES | | |
|--------------------------------------|--|---|
| Organization | Authority/interest | Interactions |
| U.S. Air Force | Controls part of land being considered for withdrawal for repository (on the Nellis Air Force Range) and for one Nevada rail implementing alternative and one heavy-haul truck implementing alternative. Has identified security concerns over potential development of the Nevada rail and heavy-haul truck implementing alternatives that would pass through land it controls. | DOE provided a briefing on the process for this EIS and on the range of issues being analyzed. DOE and USAF personnel held informal meetings to discuss specific issues and update EIS status. The USAF provided a statement of its concerns about certain transportation alternatives DOE is considering. |
| U.S. Army Corps of Engineers | Has authority over activities that discharge dredge or fill material into waters of the United States. | The two agencies discussed strategies for minimizing impacts and obtaining permits for waters of the United States. |
| U.S. Department of Agriculture | Responsible for protection of prime farm lands for agriculture in areas potentially affected by the Proposed Action. | Letter exchange resolved issues regarding repository's potential effect on farmlands. Need for additional interaction is uncertain. |
| U.S. Department of the Interior | Has responsibility for most public lands and natural resources, Indian Affairs, and geological resources, and trust responsibility with respect to American Indians. | DOE and DOI held a meeting to ensure understanding of comments on the Draft EIS and the Supplement to the Draft EIS. Attendees included representatives from the Bureau of Land Management, Fish and Wildlife Service, National Park Service, and the U.S. Geological Survey. |
| U.S. Department of Transportation | Has regulatory authority over transportation of nuclear and hazardous waste materials, including packaging design, manufacture and use, pickup, carriage, and receipt, and highway route selection. | EIS status briefing has been provided. DOE and DOT have held informal discussions concerning modeling techniques and analytical methods DOE is using in its evaluation of transportation issues. |
| U.S. Environmental Protection Agency | Has regulatory authority over radiological standards and groundwater protection standards. Mandatory role in review of EIS adequacy. | DOE provided a briefing on its approach to the EIS and on scope and content. EPA described its EIS rating process. The two agencies discussed methods for addressing any EIS comments that EPA might submit. DOE also provided a briefing on the Draft EIS and the Supplement to the Draft EIS. |
| U.S. Fish and Wildlife Service | Oversees compliance with the Endangered Species Act for some species and compliance with the Fish and Wildlife Coordination Act. | DOE and FWS have held discussions and exchanged species list information pursuant to the Endangered Species Act. DOE submitted a Draft Biological Assessment to the FWS, which issued a Final Biological Opinion that sets forth the measures, terms, and conditions for protection of the desert tortoise. |

Table C-1. Organizations with which DOE has initiated interactions (page 3 of 5).

| FEDERAL AGENCIES | | |
|--|--|--|
| Organization | Authority/interest | Interactions |
| U.S. Nuclear Regulatory Commission | Has licensing authority over spent nuclear fuel and high-level radioactive waste geologic repositories. Is required by NWPA to adopt Yucca Mountain Repository EIS to the extent practicable with the issuance by NRC of any construction authorization and license for a repository. Has regulatory authority over commercial nuclear power plants, storage of spent nuclear fuel at commercial sites, and packaging for transportation of spent nuclear fuel and high-level radioactive waste. Has general authority over possession and transfer of radioactive material. | Discussions have been held on the purpose and need for the action and on the status of the EIS. Numerous interactions related to the potential repository program. An EIS technical exchange was conducted. |
| STATES AND STATE AGENCIES | | |
| Organization | Authority/interest | Interactions |
| California Energy Commission | Knowledge of major projects; jurisdiction over aspects of California projects. | DOE provided the Draft EIS distribution list |
| Nevada State Legislators | Adequacy of Nevada legal structure; passage of legislation | DOE provided an update on the status of the project |
| State of Nevada Department of Transportation | Has authority over transportation and highways in Nevada. | DOE and NDOT personnel have informally discussed Nevada transportation issues. The State of Nevada received a formal briefing on the Draft EIS and the Supplement to the Draft EIS. |
| Affected units of local government | Local governments with general jurisdiction over regions or communities that could be affected by implementation of the Proposed Action. | Meetings that include discussions, information exchange, and status briefings, discussion of the OCRWM program, and briefings on the Draft EIS and the Supplement to the Draft EIS and on the process for developing responses to comments on the Draft EIS and the Supplement to the Draft EIS. |

Table C-1. Organizations with which DOE has initiated interactions (page 4 of 5).

| FEDERAL AND STATE AGENCIES CONSULTED JOINTLY | | |
|--|---|--|
| Organization | Authority/interest | Interactions |
| Advisory Council on Historic Preservation and Nevada State Historic Preservation Officer | Protection and preservation of historic properties and cultural resources of importance to Native Americans and others. Administration of the National Historic Preservation Act and of regulatory requirements supporting that act. | Following discussions among DOE, the Advisory Council on Historic Preservation, and the Nevada State Historic Preservation Officer, DOE and the Advisory Council on Historic Preservation have entered into a programmatic agreement (DIRS 104558-DOE 1988, all) establishing procedures DOE is to follow during site characterization and during the Secretary of Energy's development of a repository site recommendation. The Advisory Council on Historic Preservation indicated that it would be available to assist DOE in complying with environmental review requirements for historic properties. |
| LOCAL AGENCIES | | |
| Organization | Authority/interest | Interactions |
| Clark County Desert Conservation Program | Projects potentially affecting desert in Clark County | DOE presented a briefing on Draft EIS studies and measures related to desert tortoise |
| Clark County Emergency Planning Committee | Projects that could require emergency planning | DOE presented information on the status of EIS |
| NATIVE AMERICAN ORGANIZATIONS | | |
| Organization | Authority/interest | Interactions |
| National Indian Nuclear Waste Policy Committee | Nuclear waste projects that could affect tribes | DOE presented information on the status of the EIS |
| Native American Tribes | Have concern for potential consequences of repository development and transportation activities on cultural resources, traditions, and spiritual integrity of the land. Have governmental status. All interactions required for the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, and the National Historic Preservation Act are being accomplished. | Ongoing discussions on a range of topics at least twice per year. Tribal representatives have prepared and submitted the <i>American Indian Perspectives on the Yucca Mountain Site Characterization Project and the Repository Environmental Impact Statement</i> (DIRS 102043-AIWS 1998, all). DOE held formal meetings to present the Draft EIS and the Supplement to the Draft EIS. Formal comments were taken from participants at both meetings. |

Table C-1. Organizations with which DOE has initiated interactions (page 5 of 5).

| NONGOVERNMENTAL ORGANIZATIONS | | |
|---|---|---|
| Organization | Authority/interest | Interactions |
| Advisory Committee on Nuclear Waste | Advisory committee to Nuclear Regulatory Commission on nuclear waste issues | DOE submitted reports on project status, Draft EIS, and Supplement to the Draft EIS, including background information, schedule, update on repository design, and public involvement opportunities. |
| Commission on Nuclear Projects | Knowledge of DOE activities | Briefing on Draft EIS |
| Community Advisory Board for the Nevada Test Site | Maintaining awareness of relationships between NTS and the Yucca Mountain repository proposal | Briefings on Draft EIS, Supplement to the Draft EIS, EIS schedule, and project activities. |
| Community Advisory Board, Idaho National Engineering and Environmental Laboratory | Relationship between Idaho National Engineering and Environmental Laboratory and proposed Yucca Mountain repository | DOE discussed relationship between Idaho National Engineering and Environmental Laboratory and the potential repository |
| Institute of Nuclear Materials Management | Activities involving nuclear materials | DOE presented information on the Draft EIS status |
| Interjurisdictional Committee from San Onofre Nuclear Generating Stations | Projects potentially related to San Onofre | DOE made a presentation on transportation issues to the Decisionmakers' Symposium of the Interjurisdictional Committee from San Onofre Nuclear Generating Stations |
| National Academy of Sciences | Congressionally assigned responsibility to study aspects of repository proposal | DOE presented information on work performed for DOE as part of EIS |
| National Conference of State Legislators | Knowledge of major projects | Provision of information on potential impacts from proposed repository |
| Nuclear Energy Institute | Knowledge of DOE activities | DOE answered questions from senior project manager for spent fuel management |
| Rotary Clubs of Las Vegas | Projects that could affect Las Vegas | DOE provided an update on the status of the project |

- a. Abbreviations: BLM = Bureau of Land Management; CEQ = Council on Environmental Quality; DOE = U.S. Department of Energy; DOI = Department of the Interior; DOT = Department of Transportation; EIS = Environmental Impact Statement; EPA = Environmental Protection Agency; FWS = Fish and Wildlife Service; NDOT = State of Nevada Department of Transportation; NEPA = National Environmental Policy Act; NPS = National Park Service; NRC = Nuclear Regulatory Commission; NTS = Nevada Test Site; NWPA = Nuclear Waste Policy Act; OCRWM = Office of Civilian Radioactive Waste Management; USAF = United States Air Force.

- Controls portions of land in Nevada in the five corridors for a potential branch rail line and along the five potential routes for heavy-haul trucks
- Has responsibility for wild horse and wild burro management areas (Public Law 92-195, as amended, Section 3; 43 CFR Part 2800) and wildlife management areas (43 CFR 24.4) in Nevada that alternative rail corridors and routes for heavy-haul trucks cross
- Has power to grant rights-of-way and easements for transportation routes across lands it controls

The Bureau of Land Management would have a continuing interest in the development of a repository at Yucca Mountain and associated transportation routes in the State of Nevada. Any comments from the Secretary of the Interior on the EIS must be included in the Secretary of Energy's recommendations to the President on the Yucca Mountain site.

Interaction

DOE provided a briefing to the Bureau of Land Management on the status of the Draft EIS, and subsequently met with the Bureau to ensure understanding of comments on the Draft EIS and the Supplement to the Draft EIS.

C.2.1.2 Fish and Wildlife Service

The Fish and Wildlife Service, a bureau of the U.S. Department of the Interior, has a role in the overall evaluation of the impacts from the Proposed Action under consideration in the repository EIS. Under the Endangered Species Act of 1973, as amended, the Fish and Wildlife Service has responsibility to determine if projects such as the proposed Yucca Mountain Repository would have an adverse impact on endangered or threatened species, on species proposed for listing or on designated critical habitat. Any comments from the Secretary of the Interior on the EIS must accompany the Secretary of Energy's recommendation to the President on the Yucca Mountain site.

No endangered or proposed species occur on lands that would be needed for the repository. The desert tortoise is the only threatened species known to exist on this land, which lies at the northern edge of the range for desert tortoises (DIRS 104618-Buchanan 1997, pp. 1 to 4). The repository would not need or impact any critical habitat.

To evaluate the potential for the proposed repository to affect the desert tortoise, DOE and the Fish and Wildlife Service have followed a process that, in summary, includes three steps:

1. DOE submitted a study (biological assessment) containing information on desert tortoise activities and habitat in the vicinity of the proposed project, a description of project activities that could affect the desert tortoise, and the potential for adverse impacts to desert tortoises or habitat. Based on this information, DOE made a determination on whether the project would result in adverse impacts to the species.
2. DOE and the Fish and Wildlife Service met as necessary to discuss details of the potential for interaction between desert tortoises and project activities, and to consider appropriate protective measures DOE could take to reduce the potential for project impact to desert tortoises.
3. The Fish and Wildlife Service issued a biological opinion that states its opinion on whether the proposed project may proceed without causing adverse impacts to the desert tortoise, jeopardizing the continued existence of the species, or resulting in harassment, harm, or death of individual animals. The biological opinion contains protective measures and conditions that DOE would have to implement during construction, operation and monitoring, and closure of the proposed repository to minimize

adverse impacts and the potential for tortoise deaths. The biological opinion is included in the Final EIS as Appendix O.

DOE, which has conducted site characterizations at Yucca Mountain since 1986, and the Fish and Wildlife Service have conducted previous consultation processes that addressed the potential for site characterization activities to affect the desert tortoise. These processes resulted in biological opinions, published in 1990 and 1997, that determined that site characterization activities could proceed without unacceptable harm to the desert tortoise and that the protective measures and conditions stated in the biological opinions should apply to DOE activities. None of the proposed repository land is critical habitat for tortoises. The most recent consultation process on the desert tortoise built on the information gathered and the practices developed in the previous consultations, and on the positive results obtained.

Interaction

Discussions have been held and species list information has been obtained. Discussion topics have included Endangered Species Act compliance issues and agreement on extension of time for completion of the Biological Assessment. DOE submitted a Biological Assessment to the Fish and Wildlife Service. The Fish and Wildlife Service issued a Biological Opinion that contains measures, terms, and conditions for protecting the desert tortoise.

C.2.1.3 Naval Nuclear Propulsion Program

The Naval Nuclear Propulsion Program is a joint U.S. Navy and DOE program responsible for all matters pertaining to naval nuclear propulsion (DIRS 101941-USN 1996, p. 2-2). This program is responsible for the nuclear propulsion plants aboard more than 82 nuclear-powered warships with more than 102 reactors and for nuclear propulsion work performed at four naval shipyards and two private shipyards. It is also responsible for two government-owned, contractor-operated laboratories, two moored training ships, two land-based prototype reactors, and the Expended Core Facility at the Naval Reactors Facility at the Idaho National Engineering and Environmental Laboratory.

The Naval Nuclear Propulsion Program manages naval spent fuel after its withdrawal from nuclear-powered warships and prototype reactors at the Expended Core Facility. The program has conducted studies and performed environmental impact analyses on the management and containerization of naval spent nuclear fuel to prepare it for shipment to the proposed repository or other spent fuel management system (DIRS 101941-USN 1996, all). Information from these studies is relevant to the containerization of other spent nuclear fuel that could be shipped to the proposed repository.

Interaction

Since the beginning of preparations for this EIS, the Naval Nuclear Propulsion Program has participated in quarterly meetings with DOE to discuss information relevant to the emplacement of naval spent nuclear fuel in a monitored geologic repository. Detailed information about naval spent nuclear fuel is classified; therefore, the Naval Nuclear Propulsion Program performed a parallel set of thermal, nuclear, and dose calculations and provided unclassified results to DOE for inclusion in this EIS. In some cases DOE used those results as input parameters for additional analyses. Representatives of the program participated throughout the review process to ensure the accurate presentation of information on naval spent nuclear fuel.

C.2.1.4 National Marine Fisheries Service

The National Marine Fisheries Service exercises protective jurisdiction over aspects of the marine environment, including research activities, marine sanctuaries, and certain species protected by the Endangered Species Act. Potential DOE actions associated with transportation to the repository (for

example, barging and construction or modification of bridges and docking facilities) could require interaction with the National Marine Fisheries Service.

Interaction

DOE participated in informal discussions that identified National Marine Fisheries Service jurisdiction relevant to the Yucca Mountain Project and potential project activities of jurisdictional interest to the National Marine Fisheries Service in fulfilling its responsibilities. DOE has completed activities required under the Endangered Species Act for National Marine Fisheries Service jurisdictional species.

C.2.1.5 National Park Service

The National Park Service, which is a bureau of the U.S. Department of the Interior, is responsible for the management and maintenance of the Nation's national parks and monuments. The implementation of the Proposed Action could potentially affect the water supply in Death Valley National Park, which is downgradient from Yucca Mountain. The National Park Service, therefore, would have an interest in any water appropriation granted to DOE for the repository. In addition, the Park Service has expressed its interest in this EIS, its status, and the approach DOE has followed in developing the EIS.

Interaction

DOE and National Park Service representatives held a discussion during which they addressed Park Service concerns about water use for repository construction and operation. The discussion resulted in satisfaction of National Park Service concerns.

C.2.1.6 U.S. Air Force

The U.S. Air Force operates Nellis Air Force Base northeast of Las Vegas, and the Nevada Test and Training Range (formerly called the Nellis Air Force Range), which occupies much of south-central Nevada. The Range is an important facility for training American and Allied combat pilots and crews (DIRS 103472-USAF 1999, pp. 1-1 and 1-3).

A portion of the land being considered for withdrawal for the proposed repository is on the Nellis Range. If the land were withdrawn and development of the proposed repository proceeded, the Air Force would hold a continuing interest in the potential for construction, operation and monitoring, and closure activities at the repository to have consequences for Air Force operations on the adjoining land.

The Nellis Air Force Range is a premier location for training of operational flying units, as well as for conducting developmental and operational testing of advanced weapons systems. The Nellis Range complex consists of extensive air and ground working areas, live ordnance impact areas, and an extensive array of instrumental threat simulators. The Range maintains a heavy volume of testing and training activities on a daily basis. One potential Nevada branch rail line and one potential Nevada heavy-haul truck route that DOE has evaluated in this EIS would pass through the Nellis Range.

Interaction

DOE provided a briefing for U.S. Air Force personnel on the process DOE is following for this EIS and on the range of issues being analyzed. DOE and Air Force personnel have held informal meetings to discuss specific issues.

The U.S. Air Force has communicated to DOE that the transportation of spent nuclear fuel and high-level radioactive waste through the Nellis Range would inevitably lead to the imposition of flight restrictions, and that such restrictions would severely degrade the U.S. Air Force's ability to test existing and evolving weapons systems, or to train U.S. and allied aircrews. In addition, the Air Force maintains that there is no route through the Range that could avoid adversely affecting classified national security activities.

C.2.1.7 U.S. Army Corps of Engineers

The Clean Water Act of 1977 (42 U.S.C. 1251 *et seq.*) gives the U.S. Army Corps of Engineers permitting authority over activities that discharge dredge or fill material into waters of the United States. If DOE activities associated with a repository at Yucca Mountain discharged dredge or fill into any such waters, DOE could need to obtain a permit from the Corps. The construction or modification of rail lines or highways to the repository would also require Section 404 permits if those actions included dredge and fill activities or other activities that would discharge dredge or fill into waters of the United States. DOE has obtained a Section 404 permit for site characterization-related construction activities it might conduct in Coyote Wash or its tributaries or in Fortymile Wash.

Interaction

DOE and the Corps of Engineers have discussed strategies for minimizing impacts to any waters of the United States and have reviewed procedures for obtaining permits in the event that DOE activities could result in discharge of dredge or fill to the waters of the United States.

C.2.1.8 U.S. Department of Agriculture

The U.S. Department of Agriculture has the responsibility to ensure that the potential for Federal programs to contribute to unnecessary and irreversible conversion of farmlands to nonagricultural uses is kept to a minimum. Proposed Federal projects must obtain concurrence from the Natural Resource Conservation Service of the Department of Agriculture that potential activities would not have unacceptable effects on farmlands (7 U.S.C. 4201 *et seq.*).

Interaction

DOE has submitted documentation to the Department of Agriculture on potential consequences of the Proposed Action for farmlands. The Department of Agriculture has reviewed the documentation and the two agencies have agreed that a repository at Yucca Mountain would not affect farmlands.

C.2.1.9 U.S. Department of the Interior

The U.S. Department of the Interior has responsibility for most nationally owned public lands and natural resources. Department of the Interior activities potentially affected by the Proposed Action include managing lands and resources, conducting scientific research and investigations, developing resources, and carrying out trust responsibilities of the U.S. Government with respect to American Indians. The Department of the Interior oversees various bureaus with jurisdictional responsibilities or interests affected by Yucca Mountain: The Bureau of Indian Affairs, the Bureau of Land Management, the National Park Service, the Office of Surface Mining, the U.S. Fish and Wildlife Service, and the U.S. Geological Survey. In addition to meeting with the Department of the Interior itself, DOE has contacted several of the bureaus separately regarding Yucca Mountain.

Interaction

DOE met jointly with the Department of the Interior and several of its bureaus (Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, U.S. Geological Survey) to ensure understanding of comments made on the Draft EIS and the Supplement to the Draft EIS.

C.2.1.10 U.S. Department of Transportation

The U.S. Department of Transportation has the authority to regulate several aspects of the transportation of spent nuclear fuel and high-level radioactive waste to the proposed Yucca Mountain Repository. The general authority of the Department of Transportation to regulate carriers and shippers of hazardous materials includes packaging procedures and practices, shipping of hazardous materials, routing, carrier

operations, equipment, shipping container construction, and receipt of hazardous materials (49 U.S.C. 1801; 49 CFR Parts 171 through 180).

Interaction

DOE and the Department of Transportation have exchanged letters and informal communications on topics pertaining to the proposed Yucca Mountain Project that are within the Department of Transportation's regulatory interest. DOE and the Department of Transportation have held informal discussions on the modeling techniques and analytical methods DOE used in its evaluation of transportation issues.

C.2.1.11 U.S. Environmental Protection Agency

The U.S. Environmental Protection Agency has two primary responsibilities in relation to the proposed Yucca Mountain Repository. It is responsible for promulgating regulations that set radiological protection standards for media that would be affected if radionuclides were to escape the confinement of the repository. In addition, the Agency oversees the National Environmental Policy Act process for Federal EISs. Council on Environmental Quality regulations implementing the National Environmental Policy Act specify procedures that agencies must follow and actions that agencies must take in preparing EISs. Depending on the level of concern that the Agency might have with environmental aspects of the Yucca Mountain Project Draft EIS, it can initiate a consultation between DOE and the Council on Environmental Quality. Under the Nuclear Waste Policy Act, as amended (NWPA), the Secretary of Energy's recommendation to the President must include both a Final EIS and the Environmental Protection Agency's comments on the EIS.

Interaction

DOE and the Environmental Protection Agency held a meeting at which DOE provided a briefing on its approach to the EIS and its scope and content. At that meeting, the Environmental Protection Agency described its EIS rating process, and personnel from the two agencies discussed methods for addressing EIS comments that the Agency submitted on the Draft EIS.

In addition, DOE provided a briefing to the Environmental Protection Agency on the Draft EIS and the Supplement to the Draft EIS. The briefing included information on schedule, update of the repository design, and opportunities provided for public involvement during the EIS preparation process.

C.2.1.12 U.S. Nuclear Regulatory Commission

The Nuclear Waste Policy Act, as amended (42 U.S.C. 10101 *et seq.*), establishes a multistep procedure for reviews and decisions on the proposal to construct, operate and monitor, and close a geologic repository at Yucca Mountain. The final steps in this procedure require DOE to make an application to the Nuclear Regulatory Commission for authorization to construct a repository at Yucca Mountain and the Commission to consider this information and make a final decision within 3 years on whether to approve the application. The NWPA directs the Commission to adopt this EIS to the extent practicable in support of its decisionmaking process. Any Nuclear Regulatory Commission comment on this EIS must accompany the Secretary of Energy's recommendation to the President.

The Nuclear Regulatory Commission also has authority under the Atomic Energy Act of 1954, as amended, to regulate persons authorized to own, possess, or transfer radiological materials. In addition, the Commission regulates transportation packaging, transportation operations, and the design, manufacture, and use of shipping containers for radiological materials with levels of radioactivity greater than Department of Transportation Type A materials. Determination as to whether radiological materials are Type A or greater are made in accordance with a procedure set forth in 49 CFR 173.431.

Interaction

Discussions have been held on the purpose and need for the Proposed Action and on the status of the EIS. The regulatory context of the EIS has been reviewed. Additional discussions have been related to the repository program in general or to specific informational items. An EIS technical exchange was conducted. Further interactions with the Nuclear Regulatory Commission will include those necessary to process any application to construct a repository at Yucca Mountain and to ensure a common understanding of technical information and issues.

C.2.2 STATE AND STATE AGENCIES

C.2.2.1 State of Nevada

If DOE receives authorization to construct, operate and monitor, and eventually close a geologic repository at Yucca Mountain, DOE would need to obtain a range of permits and approvals from the State of Nevada. DOE would need to coordinate application processing activities with the State to complete the permitting processes. DOE could require permits or approvals such as the following:

- An operating permit for control of gaseous, liquid, and particulate emissions associated with construction and operation
- A public water system permit and a water system operating permit for provision of potable water
- A general permit for storm-water discharge
- A National Pollutant Discharge Elimination System permit for point source discharges to waters of the State
- A hazardous materials storage permit to store, dispense, use, or handle hazardous materials
- A permit for a sanitary and sewage collection system
- A solid waste disposal permit
- Other miscellaneous permits and approvals

DOE required similar permits and approvals from the State of Nevada to conduct site characterization activities at Yucca Mountain. DOE and the State coordinated on a range of activities, including an operating permit for surface disturbances and point source emissions, an Underground Injection Control Permit and a Public Water System Permit, a general discharge permit for effluent discharges to the ground surface, a permit for the use of groundwater, a permit from the State Fire Marshal for the storage of flammable materials, and a permit for operation of a septic system. DOE could apply for additional or expanded authority under the existing permits, where needed, if provisions for expansion became applicable. DOE or its contractors could also need to coordinate transportation activities, highway uses, and transportation facility construction and maintenance activities with the Nevada Department of Transportation, including procedures applicable to the construction and operation of roadways.

Interaction

The State of Nevada received a formal briefing on the Draft EIS after its publication. DOE and Nevada Department of Transportation personnel have had informational discussions on Nevada transportation issues.

C.2.3 FEDERAL AND STATE AGENCIES CONSULTED JOINTLY

C.2.3.1 Advisory Council on Historic Preservation and Nevada State Historic Preservation Officer

In the mid- to late-1980s, DOE, the Nevada State Historic Preservation Officer and the Advisory Council on Historic Preservation discussed the development of a Programmatic Agreement to address DOE responsibilities under Sections 106 and 110 of the National Historic Preservation Act and the Council's implementing regulations. These discussions led to a Programmatic Agreement between DOE and the Advisory Council on Historic Preservation (DIRS 104558-DOE 1988, all) that records stipulations and terms to resolve potential adverse effects of DOE activities on historic properties at Yucca Mountain. The activities covered by the Agreement include site characterization of the Yucca Mountain site under the NHPA and the DOE recommendation to the President on whether or not to develop a repository, informed by a final EIS prepared pursuant to the National Environmental Policy Act and the NHPA.

Although not a formal signatory, the Nevada State Historic Preservation Officer has the right at any time, on request, to participate in monitoring DOE compliance with the Programmatic Agreement. In addition, DOE must provide opportunities for consultations with the Advisory Council on Historic Preservation, the Nevada State Historic Preservation Officer, and Native American tribes as appropriate throughout the process of implementing the Agreement. DOE submits an annual report to the Advisory Council and the Nevada State Historic Preservation Officer describing the activities it conducts each year to implement the stipulations of the Programmatic Agreement. This report includes a description of DOE coordinations and consultations with Federal and State agencies and Native American Tribes on historic and culturally significant properties at Yucca Mountain.

DOE will continue to seek input from the Nevada State Historic Preservation Officer and the Advisory Council on Historic Preservation, and will interact appropriately to meet the reporting and other stipulations of the Programmatic Agreement.

Interaction

DOE has submitted annual reports to the Nevada State Historic Preservation Officer and the Advisory Council on Historic Preservation and has provided opportunities for consultations with agencies and Native American Tribes as appropriate in accordance with the terms of the Programmatic Agreement.

C.2.4 LOCAL AGENCIES

C.2.4.1 Affected Units of Local Government

As defined by the NHPA, the affected units of local government are local governments (counties) with jurisdiction over the site of a repository. At the discretion of the Secretary of Energy, affected units of local government can also include other local governments that are contiguous to the unit that has jurisdiction. Concerns of the affected units of local government range from socioeconomic impacts to potential consequences of transportation activities. Nye County, Nevada, has jurisdiction over the repository site and is one of the affected units of local government. The Secretary has included Clark, Lincoln, Esmeralda, Mineral, Churchill, Lander, Eureka, and White Pine Counties in Nevada and Inyo County in California as affected units of local government. DOE has also sought input on the Proposed Action from Elko County, Nevada, which is not contiguous to Nye County, but which could be affected by transportation activities associated with the Proposed Action.

DOE has offered local governments the opportunity to submit documents providing perspectives of issues associated with the EIS. At Draft EIS publication, Nye County had prepared such a document.

In addition, other documents related to the Yucca Mountain region have been prepared in the past by several local government units including Clark, Lincoln, and White Pine Counties.

Interaction

DOE has held formal meetings twice a year with the affected units of local government. These meetings have included discussions and status briefings on a range of issues of interest to local governments, including a discussion of the Yucca Mountain program, briefings on the Draft EIS, information exchanges, consultation on permitting processes, and the process for developing responses to comments on the Draft EIS and the Supplement to the Draft EIS. DOE has also held numerous informal meetings with local government representatives. Documents have been received from units of local government.

C.2.5 NATIVE AMERICAN TRIBES

Many tribes have historically used the area being considered for the proposed Yucca Mountain Repository, as well as nearby lands (DIRS 102043-AIWS 1998, p. 2-1). The region around the site holds a range of cultural resources and animal and plant resources. Native American tribes have concerns about the protection of cultural resources and traditions and the spiritual integrity of the land. Tribal concerns extend to the propriety of the Proposed Action, the scope of the EIS, and opportunities to participate in the EIS process, as well as issues of environmental justice and the potential for transportation impacts (DIRS 102043-AIWS 1998, pp. 2-2 to 2-26, and 4-1 to 4-12). Potential rail and legal-weight truck routes would follow existing rail lines and highways, respectively. The legal-weight truck route would pass through the Moapa Indian Reservation and the potential rail line would pass near the Reservation. Potential routes for legal-weight and heavy-haul trucks would follow existing highways, and would pass through the Las Vegas Paiute Indian Reservation.

DOE Order 1230.2 recognizes that Native American tribal governments have a special and unique legal and political relationship with the Government of the United States, as defined by history, treaties, statutes, court decisions, and the U.S. Constitution. DOE recognizes and commits to a government-to-government relationship with Native American tribal governments. DOE recognizes tribal governments as sovereign entities with, in most cases, primary authority and responsibility for Native American territory. DOE recognizes that a trust relationship derives from the historic relationship between the Federal Government and Native American tribes as expressed in certain treaties and Federal law. DOE has and will consult with tribal governments to ensure that tribal rights and concerns are considered before taking actions, making decisions, or implementing programs that could affect tribes. These interactions ensure compliance with provisions of the American Indian Religious Freedom Act (42 U.S.C. 1996 *et seq.*), the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*), DOE Order 1230.2 (*American Indian Tribal Government Policy*), Executive Order 13007 (*Sacred Sites*), Executive Order 13084 (*Consultation and Coordination with Indian Tribal Governments*), and the National Historic Preservation Act (16 U.S.C. 470f).

Interaction

The Native American Interaction Program was formally begun in 1987. Representatives from the Consolidated Group of Tribes and Organizations have met in large group meetings twice yearly with DOE on a range of cultural and other technical concerns. Additionally, specialized Native American subgroups have been periodically convened to interact with DOE on specific tasks including ethnobotany, review of artifact collections, field archaeological site monitoring, and the EIS process.

The Consolidated Group of Tribes and Organizations consists of the following:

- **Southern Paiute**
 - Kaibab Paiute Tribe, Arizona
 - Paiute Indian Tribes of Utah
 - Moapa Band of Paiutes, Nevada
 - Las Vegas Paiute Tribe, Nevada
 - Pahrump Paiute Tribe, Nevada
 - Chemehuevi Paiute Tribe, California
 - Colorado River Indian Tribes, Arizona
- **Western Shoshone**
 - Duckwater Shoshone Tribe, Nevada
 - Ely Shoshone Tribe, Nevada
 - Yomba Shoshone Tribe, Nevada
 - Timbisha Shoshone Tribe, California
- **Owens Valley Paiute and Shoshone**
 - Benton Paiute Tribe, California
 - Bishop Paiute Tribe, California
 - Big Pine Paiute Tribe, California
 - Lone Pine Paiute Tribe, California
 - Fort Independence Paiute Tribe, California
- **Other Official Native American Organizations**
 - Las Vegas Indian Center, Nevada

Tribal representatives have prepared and submitted the *American Indian Perspectives on the Yucca Mountain Site Characterization Project and the Repository Environmental Impact Statement* (DIRS 102043-AIWS 1998, all). This document discusses site characterization at Yucca Mountain and the Proposed Action in the context of Native American culture, concerns, and views and beliefs concerning the surrounding region. It has been used as a resource in the preparation of the EIS; excerpts are presented in Chapter 4, Section 4.1.13.4, to reflect a Native American point of view. The issues discussed ranged from traditional resources to concerns related to the potential repository.

C.3 Interests of Selected Government Organizations Having Oversight of DOE Activities Related to the Yucca Mountain Repository

C.3.1 COUNCIL ON ENVIRONMENTAL QUALITY

Congress established the Council on Environmental Quality within the Executive Office of the President as part of the National Environmental Policy Act of 1969. In enacting that Act, Congress recognized that nearly all Federal activities affect the environment in some way, and mandated that before Federal agencies take action, they must consider the effects of their actions on the quality of the human environment. It is primarily responsible for coordinating Federal environmental efforts and works closely with agencies and other White House offices in the development of environmental policies and initiatives. One of the Council's primary tasks is overseeing Federal agencies' implementation of the environmental impact assessment process.

Interaction

DOE has provided information and documents, including the Draft EIS and the Supplement to the Draft EIS, to the Council on Environmental Quality. DOE provided a briefing on the Draft EIS and the Supplement to the Draft EIS, including information on schedule, update of the repository design, and opportunities provided for public involvement during the EIS preparation process. Under the NWPA, the Council has a responsibility to provide its comments on the EIS to the President if the Secretary of Energy recommends approval of the Yucca Mountain site.

C.3.2 NUCLEAR WASTE TECHNICAL REVIEW BOARD

The Nuclear Waste Policy Amendments Act of 1987 created the 11-member Nuclear Waste Technical Review Board to evaluate DOE scientific and technical activities related to the management and disposal of the Nation's commercial spent nuclear fuel. The Board's primary responsibility is to evaluate (1) the site characterization phase of the Yucca Mountain Project and the activities associated with determining whether the Yucca Mountain site is suitable for further development as a geologic repository, and (2) the packaging and transportation of spent nuclear fuel and high-level radioactive waste.

The mandate of the Board is to evaluate the scientific and technical work DOE is performing in its commercial nuclear waste disposal program. The Board makes scientific and technical recommendations to DOE to ensure a technically defensible site suitability determination and License Application, and advises DOE on the organization and integration of scientific and technical work pertinent to the Yucca Mountain site.

Interaction

DOE has provided information and work products to the Board, has met with the Board to review aspects of site characterization and the site suitability determination, and has received scientific and technical recommendations from the Board. Many of these interactions were open to the public. DOE provided a briefing on the Supplement to the Draft EIS, including information on schedule, update of the repository design, and opportunities provided for public involvement during the EIS preparation process.

C.4 Requests for Cooperating Agency Status

This EIS addresses a range of potential activities that are of potential concern to other agencies and to Native Americans. Governmental agencies and Native American tribes participated in the EIS process by submitting scoping comments and may submit comments on this Draft EIS. Representatives of Native American tribes have submitted a document that provides their perspective on the Proposed Action. Moreover, DOE has invited local governments in Nevada to submit reference documents providing information on issues of concern.

DOE is the lead agency for this EIS. The lead agency may request any other Federal agency that has jurisdiction by law or special expertise regarding any environmental impact involved in a proposal (or a reasonable alternative) to be a cooperating agency for an EIS (40 CFR 1501.6 and 1508.5). The regulations also allow another Federal agency to request that the lead agency designate it as a cooperating agency. Finally, the regulations allow state or local agencies of similar qualifications or, when the effects are on a reservation, a Native American Tribe, by agreement with the lead agency to become a cooperating agency (40 CFR 1508.5).

If the lead agency designates a cooperating agency, the lead agency's duties toward the cooperating agency include the following:

- Requesting early participation in the National Environmental Policy Act (that is, EIS) process

- Using any environmental analysis or proposal provided by a cooperating agency with legal jurisdiction or special expertise to the greatest extent possible consistent with its responsibilities as a lead agency
- Meeting with a cooperating agency when the cooperating agency requests environmental analyses including portions of the EIS for which the cooperating agency has special expertise
- If the lead agency requests, making staff support available
- Using its own funds, except the lead agency is to fund major activities or analyses it requests to the extent available

Several agencies, tribes, or tribal organizations have either requested cooperating agency status for this EIS, made comparable proposals for participation, or stated positions in regard to the extent of their participation. Table C-2 summarizes agency requests, proposals, and position statements together with the DOE responses, if appropriate. DOE did not designate any cooperating agencies for this EIS process.

Table C-2. History of requests for cooperating status and similar proposals (page 1 of 4).

| Agency | Request/statement/offer | Date | DOE response | Date |
|--|---|---|---|---|
| U.S. Department of the Navy | Request for cooperating agency status (DIRS 104637-Guida 1995, all) | May 23, 1995 | DOE can draw on existing information from Navy participation in other EISs. DOE will conduct close consultations to ensure accuracy of information used. DOE declines cooperating agency status (DIRS 104625-Dixon 1995, all). | July 10, 1995 |
| U.S. Department of the Interior, National Park Service | Request for cooperating agency status (DIRS 104643-Martin 1995, all) | September 21, 1995 | DOE prefers to address NPS comments or issues related to the Death Valley National Park through close consultations between the two agencies. DOE declines cooperating agency status (DIRS 104627-Dixon 1995, all). | November 11, 1995 |
| Nye County | Request for cooperating agency status (DIRS 104645-McRae 1995, all) (DIRS 104614-Bradshaw 1995, all) (DIRS 104630-YMP 1997, all) (DIRS 104615-Bradshaw 1998, all) | August 15, 1995 October 4, 1995 December 5, 1995 July 30, 1998 | DOE expresses appreciation for the County's interest and desire to participate, commits to active consultations with Nye County and other entities on selected issues during EIS development, outlines general elements of consultation and coordination contemplated by DOE. DOE declines cooperating agency status (DIRS 104604-Barnes 1995, all) (DIRS 104605-Barnes 1995, all) (DIRS 104608-Barrett 1998, all). | November 21, 1995 December 1, 1995 September 24, 1998 |
| Churchill County | Request for cooperating agency status (DIRS 104653-Regan 1995, all) | May 30, 1995 | DOE does not foresee the need to establish formal MOUs to govern Churchill County's or other parties' participation in the NEPA process for the Repository EIS. CEQ and DOE regulations provide sufficient guidance for participation of all affected units of local government and members of the public. DOE describes steps being taken to ensure all interested and potentially affected organizations and individuals have early and equal opportunity to participate in EIS development. DOE declines cooperating agency status (DIRS 104606-Barnes 1995, all). | July 21, 1995 |

Table C-2. History of requests for cooperating status and similar proposals (page 2 of 4).

| Agency | Request/statement/offer | Date | DOE response | Date |
|-------------------------------|--|-----------------|---|----------------|
| Lincoln County | Proposal for a cooperative agreement with DOE in assessing the continued development of rail and highway route options to the Yucca Mountain site (DIRS 104656-Wright 1996, all). | April 22, 1996 | DOE expresses appreciation for the County's desire to participate in DOE transportation planning activities, but indicates that, because much of the planning will be done to support the EIS, a cooperative agreement would be unnecessary. DOE identifies active consultation and coordination as an objective of the EIS process (DIRS 104610-Benson 1996, all). | August 2, 1996 |
| Nuclear Regulatory Commission | NRC does not intend to participate as a cooperating agency (DIRS 104640-Holonich 1995, all) | March 1, 1995 | DOE sent no response to this letter. | NA |
| Nuclear Regulatory Commission | NRC sent a letter (July 7, 1997) to the Navy. The NRC letter responded to a Navy transmission to the NRC of information on naval spent nuclear fuel. The information had been prepared for EIS use. In its letter, the NRC indicated that it would evaluate the information as part of prelicensing consultations with DOE on waste form issues but that, because NRC is required to review and adopt any EIS submitted as part of a DOE License Application, including information on naval SNF, NRC staff does not intend to formally review and comment on the Navy data. NRC sent DOE a copy of its response to the Navy (DIRS 104654-Stablein 1997, all). | August 22, 1996 | NA | NA |

Table C-2. History of requests or cooperating status and similar proposals (page 3 of 4).

| Agency | Request/statement/offer | Date | DOE response | Date |
|---|--|-------------------|--|---------------|
| U.S. Department of Air Force | Letter from USAF to the State of Nevada, stating that DOE has no obligation to consult with USAF regarding the transportation options DOE elects to evaluate as a result of NEPA public scoping comments, including the Caliente-Chalk Mountain heavy-haul route through Nellis Air Force Range. USAF acknowledged its close interaction with YMP and its intent to “continue this close relationship” (DIRS 104632-Esmond 1997, all). | September 4, 1997 | NA | NA |
| Council of Energy Resources Tribes | Concept paper for Native American participation in the production of the YMP EIS (DIRS 104622-Burnell 1996, all). | June 19, 1996 | DOE expressed thanks for the concept paper, described the status of the EIS (deferred during Fiscal Year 1996), committed to consideration of comments expressed in the concept paper along with all other comments received during the public scoping process. DOE stated that it would prepare a scoping comment summary and make the summary publicly available, indicated its active consideration of various approaches to consultations with other agencies and Native American tribes, including possible preparation of an EIS-referenceable document (DIRS 104629-Dixon 1996, all). | July 26, 1995 |
| Advisory Council on Historic Preservation | Expressed thanks for DOE invitation to participate in the EIS process. Indicated desire to assist with development of the EIS and availability to assist DOE in complying with environmental review requirements; expressed intent to provide comments on the draft EIS (DIRS 104652-Nissley 1995, all). | October 12, 1995 | DOE did not prepare a response to this formal scoping comment. | NA |

Table C-2. History of requests for cooperating status and similar proposals (page 4 of 4).

| Agency | Request/statement/offer | Date | DOE response | Date |
|---|---|-----------------|---|-------------------|
| Timbisha Shoshone Tribe of Death Valley, California | Letter to President Clinton expressing opposition to YMP; enclosed a Tribal Resolution condemning the siting of YMP; requested active involvement/consultation at a government-to-government level (DIRS 104613-Boland 1996, all). | August 14, 1996 | DOE acknowledged expressed concerns and Tribal Resolution; identified ongoing Native American Interaction Program as vehicle to promote consultations and protection of cultural resources in YMP area; stated that comments from tribal governments were actively solicited during scoping period and Timbisha Shoshone will be afforded opportunity to comment on Draft EIS following its publication (DIRS 104607-Barnes 1996, all). | November 12, 1996 |
| National Congress of American Indians | Letter expressed thanks to DOE (Secretary O'Leary) for invitation to meeting of public and private officials to exchange views on DOE management of SNF and radioactive waste, described NCAI as an organization, described Federal Government's fiduciary duty to tribes as sovereign nations, discussed lack of "affected status" for tribes under the NWPA, state Secretary O'Leary's three commitments to Federally recognized tribes in the Yucca Mountain area during the last year, including inclusion in future Yucca Mountain consultations, requested that DOE and Congress mandate a participatory role for tribal governments as part of any proposals to change the NWPA (DIRS 104633-Gaiashkibos 1995, all). | March 1, 1995 | NA | NA |

- a. Abbreviations: CEQ = Council on Environmental Quality; MOU = Memorandum of Understanding; NA = not applicable; CAI = National Congress of American Indians; NEPA = National Environmental Policy Act; NPS = National Park Service; NRC = U.S. Nuclear Regulatory Commission; NWPA = Nuclear Waste Policy Act; SNF = spent nuclear fuel; USAF = U.S. Air Force; YMP = Yucca Mountain Project.

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